

Human Trafficking in the Courtroom:

Insights for the Bench and the Bar-

Part I

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Presentation Goals

- Human Trafficking 101
- Federal and State-Based Human Trafficking Law
- Trauma and Traumatic Reactions
- Trauma-Informed Legal Practice

What is Human Trafficking?

- A crime that is defined internationally, federally, and at the state-level
- Involves compelled service across a variety of labor sectors
- Includes both trafficking into the commercial sex trade as well as trafficking into other forms of labor

Federal Law:

The Trafficking Victims Protection Act

- The TVPA was the first comprehensive piece of federal legislation that addressed human trafficking
- Emerged on the heels of the *El Monte* case
- First enacted in the year 2000, the TVPA contains:
 - Human trafficking legal definitions
 - Criminal provisions for prosecution of traffickers
 - Immigration protections for trafficking victims
 - Civil remedies
 - Victim benefits

**Definition of “Severe Forms of
Trafficking in Persons*”**

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graph TD; A([Definition of “Severe Forms of Trafficking in Persons*”]) --> B([Sex Trafficking]); A --> C([Labor Trafficking]);
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Sex Trafficking

**Labor
Trafficking**

Sex Trafficking: Using *force, fraud, or coercion* to recruit, harbor, transport, provide, obtain, patronize, or solicit a person for a commercial sex act, **or** in which person performing the act is under age 18.

Labor Trafficking: Using *force, fraud or coercion* to recruit, harbor, transport, or obtain a person for labor or services in involuntary servitude, peonage, debt bondage or slavery

***22 U.S.C.A. §7102(9)**

The Trafficking Victims Protection Act: Criminal Provisions

- **Forced Labor: 18 U.S.C. § 1589**
 - Refers to the crime of providing or obtaining the labor/services of a person through force, fraud, or coercion
 - Statute specifically references “abuse or threatened abuse of the law or legal process”
 - Those who knowingly benefit from this crime may be charged as principals
- **Sex Trafficking: 18 U.S.C. § 1591**
 - Refers to the sex trafficking of children *or* of adults by force, fraud, or coercion
 - References the commerce clause!
 - Punishment for child sex trafficking varies by the age of the child

The Trafficking Victims Protection Act: Criminal Provisions

- **Trafficking: 18 U.S.C. § 1590**
 - Criminalizes a broader range of actions than “providing or obtaining labor;” includes recruitment, harboring, or transporting victims
 - Third party recruiters may be criminalized under this statute
- **Document Servitude: 18 U.S.C. § 1592, 18 U.S.C. § 1597**
 - Refers to the destruction, concealing, removal, confiscation, or possession of passport/immigration documents in the course of violating an anti-trafficking law
- **Attempt: 18 U.S.C. § 1592 (a)(2)/18 U.S.C. § 1594(a)**
 - § 1592 (a)(2): “[W]ith intent to violate . . .”
 - § 1594(a): “Whoever attempts to violate [U.S. anti-trafficking laws] shall be punishable in the same manner as a completed violation of that section.”

The Trafficking Victims Protection Act: Restitution & Civil Relief

- **Restitution (18 U.S.C. § 1593):**
 - Under the TVPA, traffickers must be ordered to pay for “the full amount of the victim’s losses” resulting from the trafficking
 - Calculated as “the greater of the gross income or value to the defendant of the victim’s services or labor or the value of the victim’s labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act.”
 - Challenges in calculation for sex vs. labor trafficking!
- **Civil Damages (18 U.S.C. § 1595):**
 - Added by the 2003 TVPA reauthorization
 - Victims of any violation of the TVPA may bring a civil case against their trafficker *and anyone whoever knowingly benefitted*
 - Not precluded from filing a civil claim if restitution is ordered

The Trafficking Victims Protection Act: Victim Benefits

- Foreign nationals who are victims of severe forms of trafficking are eligible for:
 - Cash assistance
 - Food stamps
 - Health coverage
 - Language training classes
 - Job training
- Adults must be certified by HHS to receive these benefits; child victims do not
- What about U.S. citizen victims?

The Trafficking Victims Protection Act: Immigration Remedies

- **T Nonimmigrant Visa**

- Recognizes the unique vulnerability of foreign national trafficking victims

- **Requirements:**

- Victim of “severe form of trafficking”
- Physically present in the U.S. “on account of such trafficking”
- Has complied with any reasonable request for assistance by LE
 - Not applicable to minors
 - Exceptions made for those who are unable to cooperate due to physical or psychological trauma
- Would suffer “extreme hardship involving unusual and severe harm upon removal”

Additional Federal Human Trafficking Law

Preventing Sex Trafficking & Strengthening Families Act (2014):

- Required that states identify, document and determine services for trafficked youth and those at risk, report to law enforcement within 24 hours.
- Include sex trafficking data in AFCARS system for submission to Feds.
- Locating and responding to children who run away from care (report to NCMEC).

Additional Federal Human Trafficking Law

Justice for Victims of Trafficking Act (2015):

- Filled funding gap for services to domestic victims; provided funding for states to enact vacatur laws.
- Amended the Child Abuse Prevention and Treatment Act (CAPTA) to do the following:
 - Make state grant funding contingent on expanded definitions
 - New reporting requirements
 - More comprehensive regulations.
 - Of particular import: states must consider any child who is identified as a victim of sex trafficking as a victim of “child abuse and neglect” and “sexual abuse.”

Maryland's “Human Trafficking” Law:

- Law contains *both* misdemeanor and felony provisions
- **Misdemeanor Human Trafficking: §11-303(a)**
 - Trafficking of an adult (no proof of F/F/C required)
 - Incarceration not exceeding 10 years, a fine not exceeding \$5k, or both
- **Felony Human Trafficking: §11-303(b)**
 - Trafficking of a minor (no proof of F/F/C required)
 - Trafficking of adults (proof of F/F/C required)
 - Incarceration not exceeding 25 years, a fine not exceeding \$15k, or both
- **There is *technically* no labor trafficking law in Maryland**

Noteworthy

- **Movement** not required under state or federal law
- Force, Fraud or Coercion:
 - Proof of F/F/C not required for minors in federal **OR** state sex trafficking cases
 - Proof of F/F/C required for **ALL** labor trafficking cases, as well as federal **AND** state sex trafficking cases involving adults
- Commercial Sex Act (18 U.S.C. § 1591):
 - “[A]ny sex act, on account of which **anything of value** is given to or received by **any person**.”
 - Food, housing, and drugs all qualify as items of “value.”
 - The victim does not have to ever receive or control the item of value to fulfill this requirement!

“Defining” Force, Fraud, or Coercion

- **Force:**
 - Physical abuse
 - Sexual abuse
 - Isolation/confinement
- **Fraud:**
 - False promises of employment/education/a better life
 - False promises of romance or marriage
- **Coercion:**
 - Threats of harm to victim, victim’s family, or other loved ones
 - Emotional abuse
 - Withholding or supplying basic needs like housing/clothing/food
 - Exploitation of drug addiction, homelessness, or personal insecurity

Who is Most at Risk?

- Anyone can be a target! However, traffickers do target certain populations:
- High-Risk Groups:
 - Women
 - Histories of sexual abuse/assault
 - Immigrants
 - Substance use/abuse
 - Youth
 - Runaway/homeless
 - LGBTQ
 - Child welfare involvement

In Focus: LGBTQ+ Youth

- 2017 Covenant House Study:
 - 641 homeless and runaway youth in 10 cities were interviewed
- **Totals:**
 - 1 in 5 had experienced trafficking
 - 14% reported being trafficked for sex, 8% were trafficking for other forms of labor, and 3% were trafficked for sex and labor
- **LGBTQ Youth:**
 - 24% were trafficked for sex, compared to 12% of non-LGBTQ youth
 - 1 in 5 LGBTQ males were trafficked, compared to 1 in 10 cisgender heterosexual males
 - Half of all LGBTQ youth had traded sex in some way during their lifetimes

Risk Factors for LGBTQ+ Youth: Bullying

- LGBTQ+ youth are more than twice as likely than their non-LGBTQ+ peers to be harassed/assaulted at school
- 4 in 10 LGBTQ+ youth say the community in which they live is not accepting of LGBTQ+ people
- More than 30% of LGBTQ+ youth report experiencing physical violence within their family of origin after coming out
- More than 50% of transgender youth will have at least one suicide attempt before their 20th birthday

Risk Factors for LGBTQ+ Youth: Homelessness

- 26% of all LGBTQ+ youth report having to leave their family of origin due to rejection of their gender identity and/or sexual orientation
- 78% of LGBTQ+ youth in foster care run away or are removed from their placements due to hostility towards their perceived sexuality and/or gender presentation
- 56% of LGBTQ+ youth in care spent time living on the streets.
- 58.7% of LGBTQ+ homeless youth have experienced sexual violence compared with 33.4% of heterosexual homeless youth
- 40-46% of all homeless youth identify as LGBTQ+

Risk Factors for LGBTQ+ Youth: Barriers to Service

- LGBTQ+ youth commonly report barriers to receiving necessary services on the basis of their sexual orientation, gender identity, and gender expression
- Violence and abuse at the hands of law enforcement, social service staff, etc. on the basis of their perceived sexual orientation and gender identity is common
- According to a survey of nearly 1,000 homeless youth in New York City, LGBTQ+ youth were seven times more likely than heterosexual youth to have traded sex for a place to stay
 - Transgender youth were **eight times** more likely than non-transgender youth to trade sex for a safe place to stay
 - Many youth report being introduced to survival sex and other forms of street survival through peer networks, not traffickers

In Focus:

Trans* People and Trafficking

Primary Risk Factors:

- Disproportionately represented among homeless youth
- High levels of marginalization limit employment and housing choices
- Barriers to accessing health care services leads to accessing street-based services
- Trans women and girls are commonly profiled as sex workers by law enforcement and subsequently criminalized
- Sex work/IPV may be gender-affirming

In Focus:

Trans* People and Trafficking

Criminalization:

- As of, 21% of all transgender women have been incarcerated at some point in their lives
- 47% of black trans women have been incarcerated
- “High rates of incarceration are driven by pervasive discrimination, disproportionate poverty, homelessness, participation in street economies, and bias and abuse by law enforcement officers.”
- 39.6% of transgender people involved in sex work who appeared in court reported biased treatment by judges or other court employees

So How Does All This Connect to Trafficking?

- Histories of abuse, neglect, and bullying are exploited by traffickers
- Homelessness is incredibly common, especially among systems-involved youth
- Lack of access to necessary/emergency services and mainstream employment opportunities often results in the need for street survival
- High levels of criminalization and the collateral consequences that accompany a criminal record increases reliance on underground economy

The Intersection Between Interpersonal Violence and Human Trafficking

Trafficking commonly begins as interpersonal violence

- Once control is established through IPV, the exploitation the trafficker seeks is easier to establish

When IPV and trafficking intersect:

- Victims may be married to their trafficker
- Victims may have children with their trafficker, which can intensify dependence and control
- Traffickers may exploit their own children or the children of their victim
- Victims may cycle in and out of violent relationships after escaping their trafficker
 - Desensitized to IPV
 - Skewed perception of what healthy romantic relationships look like

Human Trafficking: Myths

- Victims see their traffickers as bad people
- Real victims will come forward and report the crime that has been committed against them
- Human trafficking must involve physical abuse
- Only immigrants or girls are victims of human trafficking
- All prostitution is trafficking

What is Trauma?

- A serious injury or shock to the body, as from violence or an accident.
- An emotional wound or shock that creates substantial, lasting damage to psychological development.
- An event or situation that causes great distress and disruption.



What Causes Trauma?

- **The Most Obvious Examples:**
 - Exposure to violence, physical abuse, sexual assault, accidents, natural disasters, etc.
- **What Else Can Cause Trauma?**
 - Discrimination based on internal characteristics, living in or in proximity to poverty, systemic neglect/betrayal
 - This includes exposure to the criminal legal system, including attorneys!

Common Reactions to Trauma

- Shock, anger, nervousness, fear, guilt, anxiety, and inability to concentrate
- These symptoms typically reduce over time
- If symptoms do not reduce one month after the traumatic event, this may indicate the development of Post-Traumatic Stress Disorder (PTSD)

Common Symptoms of PTSD

Hypoarousal	Anxiety & Panic	Irritable/ Argumentative	Difficulty Concentrating
Depression/ Sadness	Hypervigilance	Intrusive Thoughts and/or Flashbacks	Compromised Memory and/or Decision-Making
Dissociation	Emotional Numbness/Mood Swings	Self-Medication through Alcohol/Drug Use	Somatization

An Essential Question to Consider, However...

What if There is Nothing “Post”
About Your Post-Traumatic Stress
Disorder?

Complex Trauma

- Trauma occurs along a continuum from singular to chronic
- Complex trauma commonly results from extended exposure to trauma
- Complex trauma is associated with an increase in symptoms both in number and severity, as well as in type

Symptoms of Complex Trauma:

- Inability to regulate emotions/self-destructive impulses
- Amnesia and dissociation
- Chronic guilt/intense shame
- Trauma bonding
- Intense difficulties with trust and intimacy
- Attempts at self-medication

Biology of Trauma

Trauma has emotional, psychological, behavioral, and neurobiological impacts.

This includes the ability to:

- Process emotions
- Regulate responses to stress
- Associate consequences with actions
- Problem solve
- Experience empathy
- Experience typical memory function



Biology of Trauma:

BRAIN DEVELOPMENT

Smaller Corpus Callosum: The Corpus Callosum is the bridge that facilitates communication between the right and left hemispheres of the brain. People with traumatized brains may have a more difficult time using logic and creativity simultaneously, such as using words to solve problems.

Smaller Hippocampus: The Hippocampus is responsible for memory storage and retrieval. Traumatized brains have a difficult time during learning and recalling what they learned or experienced.

Biology of Trauma:

BRAIN DEVELOPMENT

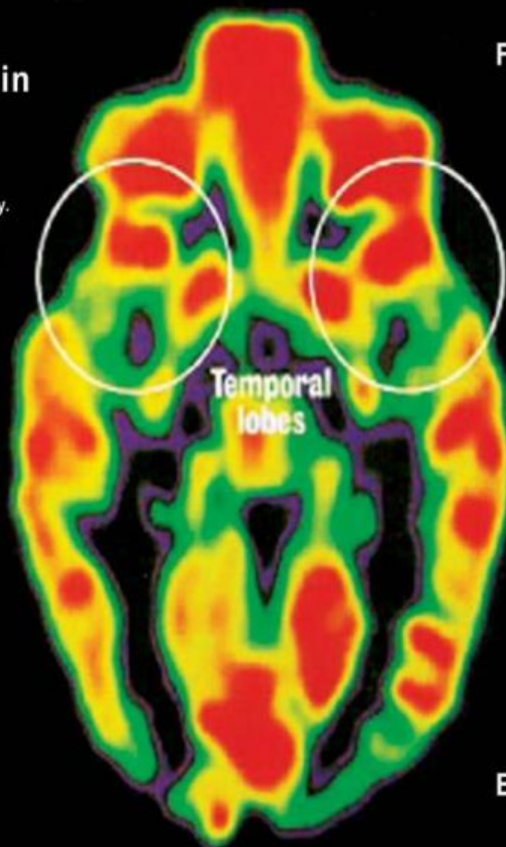
Larger, More Active Amygdala: The amygdala is the “fear center” of the brain. People with larger amygdalas experience fear faster and may engage in pre-emptive violence because they perceive danger everywhere. They are also prone to self-medication in order to shut off their over-active fear response.

Impaired Frontal Lobes: The frontal lobes house our emotional control center (problem solving, judgment, impulse control, etc.). Individuals with impaired frontal lobes may experience difficulty with controlling their emotions and predicting behavioral consequences.

The Frontal Lobes are not fully developed until the ages of 24-26.

Healthy Brain

This PET scan of the brain of a normal child shows regions of high (red) and low (blue and black) activity. At birth, only primitive structures such as the brain stem (center) are fully functional; in regions like the temporal lobes (top), early childhood experiences wire the circuits.

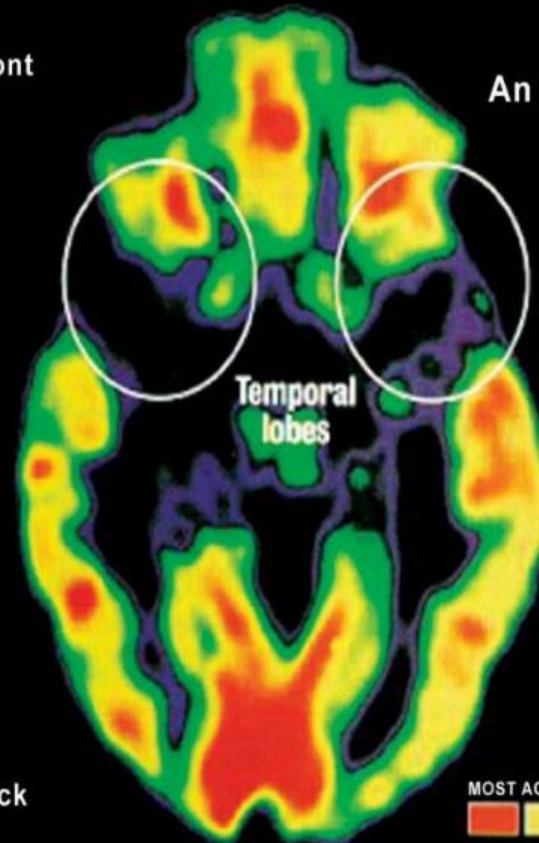


Front

Back

An Abused Brain

This PET scan of the brain of a Romanian Orphan, who was institutionalized shortly after birth, shows the effect of extreme deprivation in infancy. The temporal lobes (top), which regulate emotions and receive input from the senses, are nearly quiescent. Such children suffer emotional and cognitive problems.



MOST ACTIVE LEAST ACTIVE

Red	Yellow	Green	Black
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Complex Trauma & The Brain



What Might Trauma “Look Like” in the Context of Lawyering?

- Return of/increase in active mental health symptoms
- Flat or labile affect
- Highly emotional, hostile, or angry
- Avoidance of appointments, court dates, etc.
- Forgetful of important details or dates
- Negative behaviors directed toward attorney, judge, and court personnel
- Significant distrust of law enforcement or service providers
- Normalization of trauma and exploitation

Common Reactions to Traumatized People

- Labeled “treatment-resistant” or “difficult”
- Assumption of untruthfulness and/or re-offending
- Harsher punishments/sentences
- Seen only as a collection of symptoms rather than a person who is struggling

Why is Trauma-Informed Lawyering Important?

Many courtroom participants have experienced trauma

- Among those with addiction and mental illness, experiencing trauma is considered almost universal!

Trauma affects a courtroom participant's ability to successfully respond to treatment and communicate effectively in the courtroom setting

Acknowledging and understanding trauma may lead to more successful courtroom interactions and outcomes

What Does Being Trauma-Informed Mean?

Being Trauma-Informed Means:

- Asking “What happened to her?” vs. “What’s wrong with her?”

Being Trauma-Informed Means:

- Understanding self-destructive behaviors (self-injury, substance dependence, aggression, chronic inaction, etc.) as attempts to cope with past trauma rather than as character flaws

Excuse vs. Explanation...?

What Does Being Trauma-Informed Look Like?

Transparency

- Be as transparent as possible about the client's case in easy-to-understand terms

Predictability

- Repeatedly inform the client of what is to come, both in terms of individual meetings as well as the “bigger picture”

Control

- Purposefully give clients a voice in decisions that affect them

Reliability

- Always follow through on responsibilities/commitments/appointments

Proactive Support

- Anticipating a client's support needs makes for better overall outcomes!

Patience

- Building connections with people who have experienced trauma takes time!

Case Strategies:

Preparing for Triggers

- **Triggers = Reminders of a traumatic incident that causes a person to re-experience some aspect of the incident as if it were happening in the present moment**
- **Common Trauma Triggers:**
 - Sounds
 - Smells
 - People
 - Words/phrases
 - Feelings
- **Preparing for Triggers:**
 - Offer options in the physical space
 - Offer client comforting things during the interview
 - Explain things in advance (offer a roadmap)
 - Offer breaks
 - Use open body language and active listening so the client feels heard

The Effects of Trauma-Informed Lawyering

“During every incarceration, every institutionalization, every court-ordered drug treatment program, it was always the same: I was always treated like a hopeless case. All people could see was the way I looked or the way I smelled. It wasn’t until I finally entered a recovery-oriented, trauma-informed treatment program, where I felt safe and respected, that I could begin to heal...Someone finally asked me ‘What happened to you?’ instead of ‘What’s wrong with you?’”

Vicarious Trauma

Stems from exposure to the pain, fear, terror and trauma of others

Symptoms may mirror those of traumatized clients:

- Behaviors including exhaustion, anger, and irritability.
- Interpersonal relationship difficulties including blame of self/others, and withdrawal from rewarding relationships.
- Job performance may suffer through tardiness, decreased work quality, and avoidance of work with traumatized clients.
- Personal values and beliefs may be impacted by the development of feelings of apathy, detachment or hopelessness.
- Worldview and sense of purpose may be compromised

If You Remember One Thing...

“Traumatic experiences shake the foundations of our beliefs about safety, and shatter our assumptions of trust. Because they are so far outside what we would expect, these events provoke reactions that feel strange and ‘crazy’ [E]ven though these reactions are unusual and disturbing, they are typical and expectable. By and large, these are normal responses to abnormal events.”

-David Baldwin